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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DONALD C. BRYAN, VIRGIL CALDWELL,  
CARROLL HAMPTON, and ROBERT  
RODRIGUEZ, individually and on behalf of all  
others similarly situated,

No. C 08-5221 SI

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PRECERTIFICATION  
COMMUNICATION**

Plaintiffs,

v.

WAL-MART STORES, INC., *et al.*,

Defendants.

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Plaintiffs have filed a motion to be allowed to engage in precertification communications with class members. Docket No. 52. The motion is scheduled for a hearing on September 14, 2012. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument, and hereby VACATES the hearing. Having considered the arguments of the parties and the papers submitted, and for good cause shown, the Court hereby GRANTS plaintiffs' motion.

Specifically, plaintiffs seek leave of the Court to require defendant to produce contact information for the putative class members and allow plaintiffs' counsel to send a letter to the putative class members for the purpose of securing discovery and identifying new plaintiffs and potential class representatives. Plaintiffs attach a copy of their proposed letter to their motion. *See* Docket No. 52-2. As plaintiffs note, this case was stayed for over three years while the California Supreme Court considered and issued its ruling in *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004 (Cal. 2012). During that time, two of the proposed named plaintiffs have died, one has "lost interest" in continuing as a class representative, and plaintiffs' counsel has "concerns" about the ability of the fourth named plaintiff to continue to adequately represent the class. Motion at 1. Defendants oppose, arguing

1 that allowing such discovery would be an abuse of discretion and is outweighed by the privacy interests  
2 of the putative class members.

3 The Court recognizes that this is a unique case. This is not one where the named plaintiffs were  
4 inadequate representatives from the beginning or where plaintiffs' counsel are attempting to secure new  
5 class representatives because of deficiencies that have become apparent after the filing of their  
6 complaint. Instead, this is a case where, due to the significant passage of time, the apparently adequate  
7 named plaintiffs have either died or have reconsidered their ability to serve as class representatives.  
8 Moreover, unlike many of the inapposite cases relied on by defendant, there is an existing case and  
9 controversy here. While the deceased plaintiffs' claims have been extinguished, the claims of the  
10 remaining two plaintiffs, and of any similarly situated putative class member, continue to exist. The  
11 extraordinary stay in this case – which was jointly requested by the parties and which lasted over three  
12 years – requires extra action by the parties at this juncture. Finally, the information sought from the  
13 plaintiffs is not limited to an attempt to find additional named plaintiffs, but includes clearly relevant  
14 and appropriate discovery regarding the defendant's practices.

15 In these unique circumstances, the Court finds it appropriate to grant plaintiffs the relief they  
16 seek. Defendant shall provide the requested contact information to plaintiffs' counsel within 30 days.  
17 Plaintiffs shall mail their proposed letter within 15 days of the receipt of the contact information.  
18 **Plaintiffs shall not disclose or use the contact information for any purpose other than sending the**  
19 **approved letter, absent further order of the Court.** Plaintiffs shall be prepared – if necessary – to  
20 file an amended complaint for the limited purpose of substituting in new named plaintiffs on or before  
21 **November 30, 2012** and a Further Case Management Conference is hereby set for **November 30, 2012.**

22  
23 **IT IS SO ORDERED.**

24  
25 Dated: September 12, 2012

26   
27 **SUSAN ILLSTON**  
28 United States District Judge